UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,367	04/02/2001	Koji Obata	450100-03146	7171

20999   7590   03/06/2008
FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER
TANG, KAREN C

ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
03/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	09/824,367	OBATA ET AL.
	Examiner	Art Unit
	KAREN C. TANG	2151

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

THE REPLY FILED <u>12 February 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: <u>None</u>.

   Claim(s) objected to: <u>None</u>.

   Claim(s) rejected: <u>1 and 3-11</u>.

   Claim(s) withdrawn from consideration: <u>none</u>.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

     See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151

Continuation of 11. does NOT place the application in condition for allowance because: Examiner found applicant's argument to be not persuasive. First, Examiner would like to point out that it is well known in the art that Rate of transfer data = (packet size) divided by (time), With the well known knowledge in mind, applicant pointed to the specification, paragraph 0064, equation 21, and indicate that equation 21 "is" the calculation of the time division multiplexing cycle (T). Further, in the specification, paragraph 0066 indicates that the T is equivalent to a time T' required to leak data at the leak rate Rx.

Examiner would like to point to the AAPA reference, paragraph 0021, where, the prior art demonstrated an equation to calculate the Rx, and in paragraph 0031, it is well know that the packet size is a fixed length transport packets, which is the TS packets.

Since it is understood that Rate = Packet size / time (in this case, Rate of leakage Rx = Packet size TS / Time division multiplexing cycle T') to calculate the time division multiplexing cycle T, which is T', is just a variation of the equation submitted by applicant in paragraph 0021, and 0032.

Applicant alleged that both Kiriyama and AAPA did not teach or suggest the limitation "wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit stream" is appear to be incorrect.

Kiriyama also disclosed the alleged missing limitation, Kiriyama disclosed that in order to calculate the time division cycle, the common cell length (size of data) and the propagation delay information (Rate of data into the packet - Rate of data out of the packet) is taking into consideration, refer to Col 9, Lines 4-13. Therefore, the evident also demonstrates applicant's allegation is in fact, incorrect.

Applicant further alleged that both Kiriyama and AAPA did not teach or suggest another limitation "wherein said multiplexing means determines an order in which said plurality of bit streams are multiplexed on the basis of the data occupancy rate of said virtual data buffer calculated by said second calculating means."

Granted that the support of the alleged allegation is supported in paragraph 0107 of applicant's specification, showing in applicant's specification where by processing the leaking method can determines the output of the two same PID. It is understood by the examiner that the system requires the data occupancy rate for each buffer in order to provide the output stream so that the buffer will not overflow (refer to AAPA, 0043), and the each data in different stream contains different transport priority (AAPA, refer to 0034), therefore, the system must determines the order (the buffer that has the highest occupancy rate or the lowest occupancy rate) of the occupancy rate of each buffer in order to prevent buffer overflow.